MITCHELL | HAMLINE School of Law

William Mitchell Law Review

Volume 26 | Issue 4 Article 17

2000

A Survey of Recent Developments in the Law: Insurance Law

David March

INSURANCE LAW

A. *Minnesota Courts Define "Resident of a Residence Premises"*

On July 20, 1999, the Minnesota Court of Appeals defined the term "resident of a residence premises" as used in a renter's insurance policy's bodily injury exclusion.[1] In *Illinois Farmers Insurance Co. v. Neumann*, the Minnesota Court of Appeals concluded that a "resident of a residence" is a broader term than "resident of a household."[2] Specifically, the court held that the term "resident of a residence" recognizes the fact that it is common for unrelated people to live together in a rental unit.[3] Furthermore, the court found that a person who does not fit the definition of a "resident of a household" might fit the broader definition of a "resident of a residence."[4]

In *Illinois Farmers*, Katina Neumann rented one-half of a duplex in St. Paul, Minnesota.[5] Neumann sublet one of her rooms to Barbara Brenny, and Neumann and Brenny shared the expenses of rent and utilities equally.[6] In September 1995, Neumann's dog bit Brenny causing injures to Brenny that required medical attention.[7] Brenny also lost wages.[8] Brenny then sued Neumann for compensatory damages, and Neumann submitted a claim for coverage under her renter's insurance policy.[9] Illinois Farmers Insurance Co., the insurance company that wrote Neumann's policy, sought a declaratory judgment determining that Neumann's policy did not provide coverage for the September 1995, dog-bite

1. *See* Illinois Farmers Ins. Co. v. Neumann, 596 N.W.2d 685, 688 (Minn. Ct. App. 1999). Prior to this decision, the Minnesota Courts had not considered whether the term "resident of a residence premises" is a broader term than "resident of a household." *See id.* at 687.
2. *See id.* at 687.
3. *See id.*
4. *See id.*
5. *See id.* at 686.
6. *See id.*
7. *See id.*
8. *See id.*
9. *See id.*

incident.[10] Brenny intervened in the declaratory judgment action.[11]

Brenny argued that to determine the meaning of "resident of a residence" in the context of a renter's insurance policy, the court should be guided by the factors used to define "resident of a household" within the context of homeowner's and automobile insurance policies.[12] The district court rejected Brenny's argument and held that Neumann's insurance policy's bodily-injury exclusion was not ambiguous.[13] The district court also found that "Brenny paid rent, shared utility expenses, slept, kept her clothes, and received mail" at the duplex she sublet from Neumann.[14]

The Minnesota Court of Appeals affirmed the district court noting that the two terms, "resident of a residence" and "resident of a household," serve different functions.[15] The term "resident of a residence" is used to determine who is excluded from bodily injury coverage, and the term "resident of a household" is used to determine who is included in general coverage.[16] The court ultimately held that "Brenny was a resident of Neumann's residence premises within the meaning of the bodily injury exclusion in Neumann's renters insurance policy."[17]

The Minnesota Court of Appeals adopted two main factors that the district courts should use to determine whether a person is a resident of the premises.[18] The court examined: (1) whether there was any evidence of Brenny's intent to live at the residence and (2) whether there was any evidence of Brenny's physical presence at the residence.[19] The court observed that Brenny paid

10. *See id.* Neumann's renter's insurance policy contained a bodily injury exclusion that applied to any "resident of the residence." *See id.* Thus, if Brenny met the definition of a "resident of a residence," she would not be covered under the policy, and Illinois Farmers could deny Neumann's claim.

11. *See id.*

12. *See id.* at 687.

13. *See id.*

14. *Id.*

15. *See id.* The court noted that the term "resident of a household" refers to familial relationships and the focus of the inquiry is on living arrangements. *See id.* (citing Firemen's Ins. Co. v. Viktora, 318 N.W.2d 704, 707 (Minn. 1982) (holding that son was a resident of the household even though the son only lived with his parents while on strike)).

16. *See id.*

17. *See id.* at 688.

18. *See id.* The court also reiterated that the court's determination of a person's residence is a question of fact. *See id.* at 687 (citing Krause by Krause v. Mutual Serv. Cas. Co., 399 N.W.2d 597, 601 (Minn. Ct. App. 1987) and Auto-Owners Ins. Co. v. Harris by Harris, 374 N.W.2d 795, 797 (Minn. Ct. App. 1985)).

19. *See id.* at 688.

rent to live at Neumann's duplex indicating Brenny's intent to live at the duplex.[20] The court also noted that there was evidence of Brenny's physical presence at the duplex because, at the time of the dog bite, Brenny spent more of her time at Neumann's duplex than at any other place.[21]

In addition, the court specifically rejected certain other factors as more indicative of whether a person is a "resident of a household" rather than a "resident of a residence."[22] The factors that the court rejected included any consideration of: (1) the length of stay at the residence, (2) whether the resident's presence at the residence was continuous and significant, and (3) whether there was any special relationship between the renting and subletting resident occupants.[23] The court noted that while these factors are typically used to determine whether a person is a "resident of a household," the factors are not helpful to determine the broader question of whether a person is a "resident of a residence."[24]

B. Statute of Limitations for Uninsured Motorist Claims

The statute of limitations for judicial proceedings in an uninsured motorist claim begins to run on the day of the accident that gives rise to the claim.[25] When the insured seeks to arbitrate the claim pursuant to the insurance policy's arbitration clause, the six-year statute of limitations does not begin to run until there has been a demand for arbitration and a refusal to arbitrate.[26] Recently, the Minnesota Court of Appeals reaffirmed an insured's right to arbitrate an uninsured-motorist claim without regard to the six-year statute of limitations that governs the claim's judicial proceedings.[27] In *Hughes v. Lund*, the Minnesota Court of Appeals

20. *See id.*
21. *See id.*
22. *See id.* at 687-88.
23. *See id.* Brenny unsuccessfully argued that length-of-stay and continuous-and-significant-presence were supported in the case law. *See id.* at 687 (citing American Family Mut. Ins. Co. v. Thiem, 498 N.W.2d 279, 283 (Minn. Ct. App. 1993) and Firemen's Ins. Co. v. Viktora, 318 N.W.2d 704, 707 (Minn. 1982)).
24. *See id.*
25. *See* Weeks v. American Family Mut. Ins. Co., 580 N.W.2d 24, 27 (Minn. 1998).
26. *See* Spira v. American Standard Ins. Co., 361 N.W.2d 454, 457 (Minn. Ct. App. 1985).
27. *See* Hughes v. Lund, 603 N.W.2d 674, 678-79 (Minn. Ct. App. 1999).

held that "if the insured seeks to arbitrate a claim pursuant to an arbitration clause in the policy, the statute of limitations on plaintiff's claim does not begin to run until there has been a demand and a refusal to arbitrate."[28]

Patrick Hughes was a passenger in Douglas Rykel's motor vehicle when the vehicle was rear-ended on January 17, 1992.[29] Auto-Owners Insurance Company insured Rykel's vehicle.[30] Hughes and several others collectively sued Auto-Owners seeking uninsured motorist benefits.[31] Hughes served notice of the lawsuit on Auto-Owners by mail, but Hughes's service-by-mail notice did not comply with the Minnesota Rules of Civil Procedure 4.05.[32] On August 20, 1998, Auto-Owners moved for summary judgment arguing that the six-year statute of limitations barred the plaintiff's claims because the plaintiffs did not commence the suit properly and because the plaintiffs did not demand arbitration in writing.[33] The district court granted Auto-Owner's summary judgment motion, ruling that the uninsured motorist claim was time-barred because the statute of limitations began to run on the date of the accident.[34] The district court also ruled, *inter alia*, that Hughes's attempted service by mail was ineffectual.[35]

The Minnesota Court of Appeals affirmed in part and reversed in part, ruling that: (1) where the party claiming the right to arbitrate does not start a lawsuit, the right to demand arbitration is not defeated by the normal waiver attached to starting a lawsuit, and (2) unless there is a contractual restriction on when arbitration must be demanded, the six-year statute of limitations does not

28. *Id.* at 678.
29. *See id.* at 675.
30. *See id.*
31. *See id.*
32. *See id.* at 677. MINN. R. CIV. P. 4.05 (1996) provides that:

> In any action service may be made by mailing a copy of the summons and of the complaint (by first-class mail, postage prepaid) to the person to be served, together with two copies of a notice and acknowledgement conforming substantially to Form 22 and a return envelope, postage prepaid, addressed to the sender. If acknowledgement of service under this rule *is not received by the sender within the time defendant is required by these rules to serve the answer, service shall be ineffectual.*

MINN. R. CIV. P. 4.05 (emphasis added).
33. *See Hughes*, 603 N.W.2d at 676.
34. *See id.*
35. *See id.*

begin to run until there has been a demand and refusal to arbitrate.[36]

First, the court considered whether the appellants waived their right to arbitration.[37] The court noted the overwhelming weight of authority indicating that where a party commences a lawsuit in the face of an arbitration clause, that party waives its right to arbitrate.[38] Next, the court examined Minnesota Rules of Civil Procedure 4.05 to determine whether Hughes complied with the service-by-mail requirements.[39] The service by mail was ineffective because Hughes "did not include an acknowledgement form and [a] self-addressed, postage-prepaid, return envelope" and because Auto-Owners "did not acknowledge service under examined Minnesota Rules of Civil Procedure 4.05]."[40] As a result, the court concluded that the district court action was a nullity, and that "by not commencing a lawsuit, [Hughes] did not waive [his] right to arbitration."[41]

The court also considered whether the cause of action was time-barred by the six-year statute of limitations governing uninsured motorist claims.[42] The court noted that the six-year statute of limitations that begins to accrue from the date of the accident is confined to judicial proceedings.[43] The six-year statute of limitations that applies to arbitration proceedings does not begin to accrue until there has been a demand for arbitration and a refusal to arbitrate.[44]

Because Hughes's service of process was ineffective and the district court action was a nullity, the appeals court held, as a matter of law, that Hughes never started the lawsuit.[45] As a result, "by not commencing the lawsuit [Hughes] did not waive [his] right

36. *See id.* at 678-79.

37. *See id.* at 676.

38. *See id.* The court cited several cases including Preferred Fin. Corp. v. Quality Homes, Inc., 439 N.W.2d 741, 743 (Minn. Ct. App. 1989) (holding that actions inconsistent with the right to arbitrate indicate a waiver of that right) and NCR Credit Corp. v. Park Rapids Leasing Assocs., 349 N.W.2d 867, 868 (Minn. Ct. App. 1984) (holding that "[t]he conduct of a party in starting a lawsuit in the face of an arbitration clause is a waiver of the right to arbitrate").

39. *See Hughes*, 603 N.W.2d at 677.

40. *Id.*

41. *Id.*

42. *See id.*

43. *See id.* at 678 (citing Spira v. American Standard Ins. Co., 361 N.W.2d 454, 457 (Minn. Ct. App. 1985) (citing Har-Mar, Inc. v. Thorsen & Thorshov, Inc, 218 N.W.2d 751, 755-56 (1974), *review denied*, (Minn. 1998).

44. *See id.* (citing *Spira*, 361 N.W.2d at 457).

45. *See id.*

to arbitration."[46] Thus, the court concluded that Hughes's right to arbitrate the uninsured motorist claim was not time-barred, because Hughes did not waive his right to arbitrate and a demand and refusal to arbitrate had not yet been made.[47]

C. *Primary Versus Excess Coverage in Uninsured Motorist Claims*

Minnesota courts have recently resolved several issues related to uninsured motorist coverage. For example, the Minnesota Court of Appeals has declined to extend coverage to a minor child seeking uninsured motorist benefits pursuant to a non-custodial parent's automobile insurance policy.[48] Conversely, in a separate case, the appeals court determined that a passenger injured in an automobile accident who is not insured under the driver's policy may recover uninsured motorist benefits to the extent that the injured passenger's coverage exceeds the driver's underinsured coverage.[49]

In *Jirik v. Auto-Owners Insurance Co.*,[50] the Minnesota Court of Appeals considered whether a minor could recover uninsured motorist benefits from a non-custodial father in addition to the uninsured motorist benefits the minor child received under her custodial mother's automobile insurance policy.[51] The court applied Minnesota Statutes section 65B.49 subdivision 3a(5) (1998) to determine whether the minor child was eligible to receive uninsured-motorist benefits in excess of the benefits she was entitled to under her mother's automobile policy.[52]

In *Jirik*, Teresa Jirik was driving her car when it collided with an unoccupied truck owned by Switzer's Nursery and Landscaping, Inc.[53] Joseph Bierman was the last person to operate the truck before the collision.[54] The collision severely injured Danielle Jirik, Teresa Jirik's 13-year-old daughter.[55]

---

46. *Id.* at 677.
47. *See id.* at 678-79.
48. *See* Jirik v. Auto-Owners Ins. Co., 595 N.W.2d 219, 223 (Minn. Ct. App. 1999).
49. *See* Schons v. State Farm Mut. Auto. Ins. Co., 604 N.W.2d 125,128 (Minn. Ct. App. 2000).
50. 595 N.W.2d 219 (Minn. Ct. App. 1999).
51. *See id.* at 222.
52. *See id.* at 222-23.
53. *See id.* at 220.
54. *See id.*
55. *See id.*

To settle Danielle Jirik's injury claim, Teresa Jirik's insurance carrier paid $750,000 of its liability limit and $500,000 in uninsured motorist benefits.[56] In addition, Switzer and Bierman's insurers paid their liability limits.[57] Danielle also claimed that she was entitled to her father's uninsured motorist benefit coverage of $100,000, but her father's insurer, Auto-Owners, denied coverage.[58] Danielle Jirik sued Auto-Owners, and the district court granted summary judgment in favor of Auto-Owners, holding that "Danielle cannot collect [uninsured motorist] benefits from her father's policy because she was insured under her mother's [uninsured motorist] policy."[59]

To determine whether the district court applied the law correctly, the appeals court first looked at the language of Minnesota Statutes section 65B.49 subdivision 3a(5) (1998).[60] This subdivision states, "if the injured person is occupying a motor vehicle of which the injured person is not an insured, the injured person may be entitled to excess insurance protection afforded by a policy in which the injured party is otherwise insured."[61] This subdivision distinguishes primary from excess coverage and allows coverage through another policy only where the injured person is not covered under the primary uninsured motorist policy on the vehicle involved in the collision.[62] The court concluded that since Danielle Jirik was covered under her mother's policy, she was only entitled to coverage pursuant to her mother's insurance policy.[63] The court thereby concluded that Danielle Jirik was not legally entitled to an additional $100,000 benefit pursuant to her father's policy.[64]

The Minnesota Court of Appeals reached a similar conclusion in a related issue in *Schons v. State Farm Mutual Auto Insurance Co.*[65] In *Schons*, the court considered whether a passenger who was not

56. *See id.* at 221.
57. *See id.*
58. *See id.*
59. *Id.*
60. *See id.* at 221.
61. MINN. STAT. § 65B.49, subd. 3a(5) (1998).
62. *See Jirik*, 595 N.W.2d at 222.
63. *See id.* The court noted that although Danielle Jirik was not a named insured on her mother's policy, no one disputed that she was covered under her mother's policy. *See id.* Her mother's policy extended coverage to any minor in the custody of the named insured. *See id.*
64. *See id.*
65. 604 N.W.2d 125 (Minn. Ct. App. 2000).

insured under the driver's policy could recover underinsured motorist benefits.[66] In *Schons*, Tamara Schons was a passenger in a Geo Metro driven by Rachel Vogl that collided head-on with a Ford pick-up truck driven by Donna Bjorklund.[67] Both Vogl's and Bjorklund's automobile insurance included liability limits of $50,000 and uninsured motorist benefits of $50,000.[68] Schons claimed $400,000 in damages.[69]

Schons collected $50,000 from Vogl's liability coverage and $50,000 from Vogl's uninsured motorist benefit coverage (claiming that Bjorklund was underinsured).[70] In addition, Schons collected $48,000 from Bjorklund's liability coverage.[71] Schons then sued State Farm seeking $50,000 from her own State Farm policy, claiming that Vogl was underinsured.[72]

The district court granted summary judgment in favor of State Farm ruling that, pursuant to Minnesota Statutes section 65B.49 subd. 3a(5), Schons was legally entitled to additional benefits under her own policy only if her uninsured motorist coverage exceeded the benefits received from Vogl's uninsured motorist policy.[73] The appeals court affirmed the district court's decision noting that Schons could only recover uninsured motorist benefits under her own policy to the extent that her coverage exceeded Vogl's coverage.[74] The court held that "Schons could not receive more than $50,000 in total [uninsured motorist ("UIM")] benefits because her own UIM coverage did not 'exceed' the coverage provided by Vogl's policy."[75]

D. A Motorist's Intentional Act Does Not Give Rise to Third-Party Benefits

On April 20, 1999, the Minnesota Court of Appeals considered, as a matter of first impression, whether an insured motorist's intentional act could result in tort liability to a third party.[76] In *Nygaard v. State Farm Insurance Co.*, the Minnesota Court

66. *See id.* at 127.
67. *See id.* at 126.
68. *See id.*
69. *See id.*
70. *See id.*
71. *See id.*
72. *See id.*
73. *See id.*
74. *See id.* at 128.
75. *Id.* at 127.
76. *See* Nygaard v. State Farm Ins. Co., 591 N.W.2d 738, 740 (Minn. Ct. App.

of Appeals held that third-party-liability coverage does not arise from an insured motorist's intentional act.[77] To reach this conclusion the court determined that for the purposes of third-party-liability coverage, the term "accident," as used in an insurance policy, is viewed from the perspective of the insured motorist and that a motorist's intentional act is not an "accident."[78]

In *Nygaard*, Eileen Nygaard served as the personal representative of her daughter's estate.[79] Nygaard's daughter, Donna Link, committed suicide on February 27, 1995, by driving her automobile into an eighteen-wheel tractor-trailer.[80] The force of the collision pushed the tractor-trailer into the ditch.[81] After the collision, the tractor-trailer's driver, Lonnie Odegard, required surgery to repair his shoulder, which was damaged in the collision.[82] Odegard also lost time at work.[83] Subsequently, Odegard received approximately $28,000 in worker's compensation benefits.[84]

Odegard's worker's compensation insurer first sued the decedent's insurer, State Farm Insurance Company (State Farm), to recover the amount of worker's compensation benefits paid to Odegard.[85] The decedent's mother, acting as personal representative, joined the suit to compel State Farm to provide insurance coverage to Odegard.[86] On a motion for summary judgment, State Farm argued that the accident provision in the decedent's policy precluded coverage because the suicide was an intentional act.[87] The district court granted State Farm's motion

---

1999).

77. *See id.* at 742.

78. *See id.* at 741.

79. *See id.* at 740.

80. *See id.* at 739. It was apparent that Ms. Link intended to commit suicide that afternoon, because she left behind suicide notes addressed to her parents and to her best friend. *See id.*

81. *See id.*

82. *See id.* at 739-40.

83. *See id.*

84. *See id.* at 740.

85. *See id.*

86. *See id.*

87. *See id.* The liability section of Ms. Link's insurance policy provided that "[State Farm] will: 1. pay damages which an *insured* becomes legally liable to pay because of: (a) bodily injury to others, and (b) damage to or destruction of property including loss of its use, caused by accident resulting from the ownership, maintenance or use of *your car*; . . ." *Id.*

for summary judgment, and Eileen Nygaard appealed.[88]

The Minnesota Court of Appeals affirmed the district court and held that "[t]he decedent's intentional act of suicide [did] not constitute an 'accident' for purposes of third-party liability insurance coverage."[89] The court's holding in *Nygaard* resulted from a two-step analysis.[90] First, the court considered whose perspective should be considered to define the term "accident."[91] Second, the court considered whether the collision was covered under the decedent's insurance policy.[92]

To determine whose perspective should be considered to define the term "accident," the court first looked at the definition of the term "accident."[93] The court noted that the Minnesota Supreme Court has defined an "accident" as "simply a happening that is unexpected and unintended."[94] The court concluded that while Odegard's injuries may have been unexpected, the appeals court must also consider the Minnesota Supreme Court's holding in cases like *Lobeck v. State Farm Mutual Auto Insurance Co.* and *McIntosh v. State Farm Mutual Auto Insurance Co.*[95]

In *Lobeck*, the Minnesota Supreme Court considered certain policy exclusions and distinguished between first-party benefits (benefits that arise from no-fault coverage) and third-party benefits (benefits that arise from uninsured-motorist coverage) in light of the Minnesota No-Fault Act.[96] The Minnesota Supreme Court held that while the No-Fault Act requires first-party benefits, exclusions to third-party coverage are valid.[97] Similarly in *McIntosh*, the Minnesota Supreme Court held that the availability of first-party, no-fault benefits is determined from the victim's perspective, and the availability of third-party, uninsured-motorist benefits is

88. *See id.*
89. *Id.* at 742.
90. *See id.* at 740-41.
91. *See id.* at 741.
92. *See id.* at 741-42.
93. *See id.* at 741. The court noted that the decedent's policy was unambiguous and that the policy covered accidents. *See id.*
94. *Id.* (citing McIntosh v. State Farm Mut. Auto. Ins. Co., 488 N.W.2d 476, 478 (Minn. 1992) (citing Weis v. State Farm Mut. Auto. Ins. Co., 242 Minn. 141, 144, 64 N.W.2d 366, 368 (Minn. 1954) (defining an accident as "an unexpected happening without intention or design")).
95. *See id.* (citing Lobeck v. State Farm Mut. Auto. Ins. Co., 582 N.W.2d 246, 250 (Minn. 1998) and *McIntosh*, 488 N.W.2d at 476).
96. *See Lobeck*, 582 N.W.2d at 250.
97. *See id.* at 250.

determined from the perspective of the tort-feasor.[98]

The Minnesota Court of Appeals determined that the analysis in *Lobeck* and *McIntosh* was persuasive because the third-party liability benefits claimed by Nygaard were similar to uninsured-motorist benefits in that both types of claims must be proven under tort law.[99] As a result, liability to a third party for the first-party's act focuses on the tort-feasor—the first party.[100] Thus, to determine if the collision was an accident for the purposes of third-party coverage, the collision is viewed from the perspective of the tort-feasor, and in *Nygaard* the tort-feasor was the decedent who committed suicide.[101] Since the suicide was intentional, and since the decedent's insurance coverage was limited to injuries resulting from accidents, the appeals court affirmed the district court and denied coverage.[102]

David March

98. *See McIntosh*, 488 N.W.2d at 479-80.
99. *See Nygaard*, 591 N.W.2d at 741.
100. *See id.*
101. *See id.*
102. *See id.* The dissent argued that the focus should be on whether the decedent intended to injure Odegard. *See id.* at 743 (Amundson, J., dissenting). The dissent further argued that since intent could not be determined, Odegard should be allowed to recover under the decedent's policy. *See id.*

***